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APR 23 2009
Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
NFL Enterprises LLC,)	MB Docket No. 08-214
Complainant)	File No. CSR-7876-P
v.)	
Comcast Cable Communications, LLC,)	
Defendant)	

DIRECT TESTIMONY OF JEFF SHELL

1. My name is Jeff Shell. My business address is One Comcast Center, Philadelphia, Pennsylvania 19103.
2. Since May 2005, I have served as President of Comcast Programming Group, a division of Comcast Corporation. I am responsible for overseeing all of Comcast's affiliated cable networks, including Versus and Golf Channel.
3. I am reasonably familiar with the NFL Network ("NFLN"). I have reviewed the redacted Complaint, and I understand that, according to the Complaint, NFLN charges 70 cents per subscriber. I also understand that although it contains other programming, NFLN telecasts only eight live regular-season NFL games each year, each of which is available free on over-the-air broadcast television in the local markets of both competing teams and streamed free to certain customers on the internet.

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Versus and Golf Channel

4. Versus and Golf Channel offer a very different value proposition to distributors, their customers, and advertisers than does NFLN. In my experience, for networks that market themselves as sports networks (or that carry significant amounts of sports programming), the quantity of live competitive sports offered is the commodity most highly prized by distributors, consumers, and advertisers alike. Golf Channel and Versus have many more hours of live and same-day programming than NFLN. And, license fees that Versus and Golf Channel charge to distributors are dramatically lower than for NFLN. The Complaint assumes that the current license fees for Versus are approximately [REDACTED] per month per subscriber, and I can confirm that this is a reasonable assumption, though of course individual contracts vary depending on volume, term, launch support, and other factors. Current license fees for Golf Channel also vary depending on volume, term, launch support, and other factors, but are less than half of the license fee the NFL says that it charges for NFLN. Thus, the license fees for both Versus and Golf Channel are vastly lower than the license fee the NFL says that it charges for NFLN.

5. In my experience, Comcast Cable does not give preferential treatment to affiliated networks, but rather looks in all cases to the value proposition offered by a given network. For that reason, although I am not involved in Comcast Cable's carriage decisions, I believe that if NFLN were priced comparably to Golf or Versus, it would obtain broader distribution from Comcast Cable, and from other distributors as well.

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6. Although I was not employed at Comcast at the time, I am familiar with the evolution of Versus (then called Outdoor Life Network) and Golf Channel, both of which were launched in 1995. The widespread distribution that Golf Channel and Versus now enjoy was developed through competition in the market over the course of almost fifteen years, with reasonable pricing and significant concessions to distributors. For example, since 1995, together Versus and Golf Channel have provided hundreds of millions of dollars of launch support to distributors.

7. In 2009, Versus is scheduled to offer 368 live/same day sporting events, estimated to cover approximately 962 hours of programming. This includes unique special events such as the Tour de France (and other premiere cycling events), Dakar Rally, Indy Racing League, and the IAAF Track and Field Championships, plus substantial coverage of other sports including Professional Bull Riders, college football, college basketball, field sports such as hunting and fishing, boxing, WEC (and other mixed martial arts), extreme sports, and more. Versus also presents enormous amounts of National Hockey League ("NHL") coverage. For the 2007-2008 NHL season, Versus carried 57 regular-season games, including the All-Star game, and 52 playoff games, including the first two games of the Stanley Cup Final. Nearly every hour of this programming is exclusive to Versus including, where applicable, in the local markets of the competing teams. (One night per week during the regular NHL season, Versus shows an NHL game on a non-exclusive basis, and has found these non-exclusive games to be less valuable than the games that are exclusive.) In the few instances where a broadcaster or regional sports network in a NHL team's home market has the right to

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carry a particular early round play-off game, alternative programming is telecast on Versus during that game.) In my experience, this quantity and variety of live sports programming offered throughout the year is valued by distributors, consumers, and advertisers. Versus presents an excellent value proposition that warrants broad carriage by multichannel video programming distributors ("MVPDs") on highly-penetrated tiers.

8. In 2009, Golf Channel is scheduled to offer 150 live sporting events, estimated to cover approximately 1398 hours of live programming. Every hour of programming on the Golf Channel is exclusive; unlike NFLN, we neither blackout nor offer to other broadcasters non-exclusively any programming on Golf Channel. During the 2009 PGA Tour season, which is nearly year-round, Golf Channel will air live coverage of 47 PGA Tour events. Golf Channel also provides live or same-day coverage of the Champions Tour (27 events), LPGA Tour (17 events), Nationwide Tour (14 full-round events and one final rounds event), and the PGA European Tour (40 events). Moreover, Golf Channel's most typical viewership demographic – affluent males aged 25-54 – is highly prized by advertisers. With a relatively inexpensive license fee, a steady supply of live golf programming, and sought-after audience, Golf Channel presents an excellent value proposition that warrants broad carriage by MVPDs on highly-penetrated tiers.

9. In addition to the substantial, year-round, live, exclusive content of professional golf events on Golf Channel, it also focuses heavily on the participatory aspects of golf for the many Americans who enjoy playing the sport. Golf Channel airs instructional shows and talk shows to cater to the fan base of passionate fans who enjoy

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both playing and watching golf. Although the level of recreational participation does not necessarily drive the appeal of other sports programming, Golf Channel's audience within the large community of recreational golfers is a meaningful driver of the network's appeal to advertisers and distributors, and, among other things, increases the value of Golf Channel's non-live content, such as instructional programming.

10. Versus and Golf Channel have earned distribution on highly penetrated tiers of virtually every major MVPD, even though they have no ownership interests in either network. Approximately [REDACTED] of Comcast's [REDACTED] subscribers receive Golf Channel and Versus. However, the majority of subscribers to both Versus and Golf Channel are through MVPDs other than Comcast. In fact, over two thirds of the subscribers of both Versus and Golf Channel come from distributors other than Comcast. The Complaint asserts different subscriber numbers for Versus in the text and exhibits, but Comcast has recently reported to the SEC that Versus has approximately [REDACTED] subscribers and that Golf Channel has approximately [REDACTED] subscribers.

11. Distribution of Golf Channel and Versus can be contrasted with Comcast's carriage of its affiliated sports network, the mtn. MountainWest Sports Network ("the mtn."). The mtn. premiered on September 1, 2006. It is a network comprised of programming dedicated to the NCAA Division I Mountain West Conference, including many live football, basketball, and other sporting events. In seeking carriage for the mtn., Comcast has provided flexibility to distributors, including negotiating for, and agreeing to, carriage on sports tiers where appropriate.

The NFL Network's Ability to Compete

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12. I do not consider NFLN to be a direct competitor to either Versus or Golf Channel, not in terms of programming, advertising, or targeted viewership. Nor, as far as I can recall, has NFLN ever factored into any discussions I have had, with Comcast or other MVPDs in negotiating the terms of carriage for Versus or Golf Channel. While there is surely some overlap between NFLN, Versus, and Golf Channel in viewership and maybe some competition for advertising and – in the case of Versus – some potential competition for programming, I can imagine no way in which NFLN can be viewed as a competitor with either or both of these networks and not (to a greater degree) also with a large number of other networks including ESPN (and other ESPN-branded channels), all four major broadcast networks, TBS, TNT, USA, Outdoor Channel, SPEED Channel, the Big Ten Network and dozens of regional sports networks.

13. I understand that the NFL has alleged that NFLN's ability to compete has been improperly harmed by Comcast's decision to exercise its tiering right. In my view, NFLN's current distribution and any impact of that distribution on its ability to generate advertising and license revenue and to secure programming are directly attributable to the NFLN's unattractive value proposition and, in particular, its insistence on an excessive price.

14. The NFL Network carries significantly fewer hours of live and same-day programming than Versus and Golf Channel. As compared to the 962 hours of live programming on Versus and the 1398 hours of live programming on Golf Channel, the NFL Network carries only eight live regular-season NFL games, totaling approximately 24 hours of programming annually. In addition, these games are only broadcast during a

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few (I believe about six) weeks of the year, as compared to Versus and Golf Channel, which have year-round live programming. NFLN is also significantly more expensive than Versus or Golf Channel; its price of [REDACTED] per subscriber is more than twice as much (and almost three times as much) as distributors pay for Versus and Golf.

15. I believe the limited market acceptance of NFLN reflects the network's excessive pricing and unattractive value proposition. Although the NFLN is available in approximately [REDACTED], almost half of this distribution is attributable to DirecTV, to which I understand the carriage rights for NFLN was sold as a package with the valuable Sunday Ticket package. Excluding DirecTV, I do not believe the NFLN has achieved significant market acceptance at its current pricing.

16. In addition, the breadth of a network's distribution does not dictate its ability to secure programming. {For instance, I believe breadth of distribution was not an important factor in Versus's securing of the rights to telecast the Tour de France. In that case, I believe the audience Versus had developed among cycling fans was more important than how many households the network reached.} In my experience, other rights holders are often similarly more concerned with a network's distribution to a certain audience, than the network's distribution overall. {For instance, when Versus was competing for rights to telecast Ivy League football, the conference was particularly concerned with distribution in school markets such as Pennsylvania and Massachusetts, but less concerned with distribution in western states. As another example, Versus was able to secure the rights to a package of regular- and post-season NHL games despite bidding against ESPN, which has broader distribution than Versus. In that case, I believe

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the amount of the cash rights fee Versus was willing to pay was more important than the incrementally greater distribution ESPN would have offered. }

17. Likewise, the ability of a sports network to generate advertising revenue is not dictated by distribution but rather depends on many factors, including the viewing demographic and the network's ratings within target groups. However, because some advertisers pay a premium for broad distribution, and distribution of a network is by and large dictated by its price, networks should and in my experience do consider advertising revenues in making pricing decisions. For example, I understand that Golf Channel was initially launched with a business model to generate revenues primarily from affiliate fees and not from advertising, charging relatively higher fees for relatively limited distribution. But, as Golf Channel's appeal to advertisers became clear, Golf Channel reduced its price and provided significant concessions to distributors in order to increase distribution and drive advertising revenue. Today, Golf Channel, like other networks, chooses to charge a reasonable subscriber fee and accept reduced affiliate revenue in order to generate higher advertising revenues through broader distribution. Conversely, networks that choose to charge higher subscriber fees and accept more limited distribution, should expect to rely less on advertising revenue. At the far end of that spectrum, premium pay services with limited distribution, such as HBO, maintain a successful business model based on high affiliate revenue and little to no advertising.

Versus' Bid for NFL Games

18. In 2005 and early 2006, I participated in Comcast's efforts to secure licenses for eight regular-season NFL games to be broadcast on Versus. These

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negotiations proved unsuccessful, and ultimately Comcast was not granted the rights to live NFL games for a Comcast network.

19. In the weeks leading up to the NFL's decision to keep the games for NFLN, I discussed with others within Comcast and with the NFL the challenges and risks that would be faced in securing broad distribution of the eight-game package at the prices under discussion. We believed and explained to the NFL that those risks would be greatly increased if the NFL chose to put the games on the NFL Network since (a) NFLN did not have existing contracts with many of the largest distributors (such as Time Warner) and thus would be forced to negotiate simultaneously for a high price and broad distribution; (b) NFLN was a newly-launched network with a very limited track record with customers or distributors; (c) NFLN did not have an attractive year-round schedule of live programming; and (d) Comcast's tiering right would be triggered if Versus did not receive the games package, such that NFLN might face reduced distribution on Comcast systems if it insisted on charging a high price.

20. For these and other reasons, we repeatedly pointed out to the NFL that broad distribution of the eight-game package would be more easily achieved on Versus than on NFLN. We believed Versus would have had an easier path to distribution because, among other reasons, (a) Versus was already in approximately 65 million homes; (b) Versus had additional live, exclusive, year-round sports programming that enhanced the value of network with the eight games; and (c) Versus had existing contracts with major distributors, many of which were nearing their expiration, which would permit Versus to negotiate a new rate (rather than a pure surcharge) and to do so in

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the context that the distributors would lose the network altogether absent a new agreement.

21. Despite these advantages that we emphasized about Versus, we recognized that the market might not accept the prices (including surcharges) for Versus that were being discussed by the NFL and Comcast. In that regard, we remained concerned throughout the negotiations that the ability to achieve the distribution and price under discussion would be greatly hampered if the games were not exclusive, but rather were also available via free over-the-air broadcast television in the local markets of the playing teams.

22. During the negotiations for the eight-game package, the business plan for Versus contemplated that the addition of live NFL games would serve as a catalyst for the acquisition of additional sports programming such as marquee packages of Major League Baseball, NCAA Basketball and/or NCAA Football content. (Consistent with this business plan, before the rebranding of the Outdoor Life Network as Versus, we referred to the network in the negotiations as “MSC,” meaning “Multi-Sport Channel.”) The prices and surcharges for Versus underlying Versus’s bid for the games accordingly reflected the value and cost of such additional programming, as well as the value and cost of the eight NFL games and of Versus’ existing content.

23. After the NFL triggered Comcast’s tiering right by keeping the eight-game package for its own network, I expected the NFL to negotiate with Comcast – either by lowering the base rate or the surcharge or otherwise improving the network’s value proposition – to incentivize Comcast to keep NFLN on a broader tier of distribution and

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to refrain from exercising its contractual right to place NFLN on a sports tier. [REDACTED]

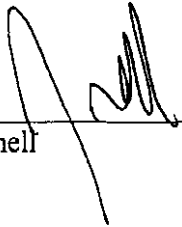
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Under penalty of perjury, I state that the foregoing is true and correct.



Jeff Shell

Dated: April 6, 2009